

September 17, 2025

Submitted via Federal eRulemaking Portal: www.regulations.gov

Catherine L. Eschbach
Director
U.S. Department of Labor
Office of Federal Contract Compliance Programs
200 Constitution Avenue NW
Washington, DC 20210

Re: Center for Workplace Compliance Comments on the Office of Federal Contract Compliance Programs' Notice of Proposed Rulemaking, *Rescission of Executive Order 11246 Implementing Regulations* (RIN 1250-AA17)

Dear Director Eschbach:

The Center for Workplace Compliance ("CWC") respectfully submits these comments in response to the Office of Federal Contract Compliance Programs' ("OFCCP") Notice of Proposed Rulemaking ("NPRM") pertaining to the affirmative action and nondiscrimination requirements arising under the Executive Order 11246, notice of which was published in the *Federal Register* on July 1, 2025.¹

CWC appreciates the opportunity to offer these comments. Please note that these comments do not address the policy choices underlying any Executive Order (E.O.), such as the rescission of E.O. 11246 and the implementation of E.O. 14173. Instead, they address issues raised in the proposed rulemaking in light of the legal environment in which we operate today.

Statement of Interest

CWC² is the nation's leading nonprofit association of employers dedicated exclusively to helping its member companies develop practical and effective programs for ensuring compliance with fair employment and other workplace requirements. Formed in 1976, CWC's membership includes U.S. employers from nearly every major industry sector and geographic region, all of whom are firmly committed to the principles and practice of equal employment opportunity.

Nearly all CWC members were subject to the nondiscrimination and affirmative action requirements of E.O. 11246 and are still subject to Section 503 of the Rehabilitation Act ("Section 503"), the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"), and their implementing regulations. As major federal contractors and subcontractors, CWC's

¹ 90 Fed. Reg. 28,472 (July 1, 2025).

² Formerly the Equal Employment Advisory Council (EEAC).

members have a significant stake and interest in ensuring that OFCCP's regulations and paperwork requirements efficiently and effectively accomplish their underlying policy objectives.

OFCCP's Proposed Changes Are Reasonable in Light of the Rescission of E.O. 11246

OFCCP proposes rescinding its regulations that implemented and interpreted E.O. 11246, which was rescinded when President Trump signed E.O. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*. Among those provisions that would be removed from Title 41 of the Code of Federal Regulations are:

- Obligations of Contractors and Subcontractors (Part 60-1)
- Affirmative Action Programs (Part 60-2)
- Uniform Guidelines on Employee Selection Procedures (Part 60-3)
- Construction Contractors—Affirmative Action Requirements (Part 60-4)
- Discrimination on the Basis of Sex (Part 60-20)
- Examination and Copying of OFCCP Documents (Part 60-40)
- Guidelines on Discrimination Because of Religion or National Origin (Part 60-50)

The regulations in question are already without legal effect,³ so their rescission seems appropriate and will provide clarity to federal contractors.

OFCCP's Rules of Practice for Administrative Proceedings Warrant Further Review

The agency is also proposing to modify the administrative enforcement procedures at 41 C.F.R. Part 60-30 to remove the E.O. 11246 components and transfer any procedures needed to enforce Section 503 and VEVRAA to OFCCP's regulations at 41 C.F.R. Parts 60-741 and 60-300, respectively. In light of the rescission of E.O. 11246, these changes also seem reasonable, at least in the short term.

We respectfully submit, however, that recent administrative caselaw developments cast significant doubt on whether the procedures in question can survive Constitutional scrutiny.⁴ We recommend that the Department of Labor initiate a separate rulemaking to cure any possible Constitutional defects within its broader administrative enforcement regime.

³ We note that while OFCCP has proposed rescinding its Uniform Guidelines regulations, this will not impact the U.S. Equal Employment Opportunity Commission's regulations at 29 C.F.R. Part 1607.

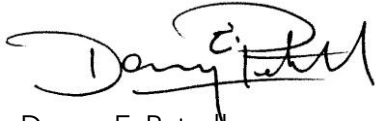
⁴ See, e.g., *SEC v. Jarkesy*, 603 U.S. 109 (2024) (the 7th Amendment precludes the Securities and Exchange Commission from levying civil penalties against a defendant without a jury trial); *ABM Industry Groups, LLC v. U.S. Department of Labor*, 756 F. Supp.3d 468 (S.D. Tex. 2024) (finding that plaintiff would likely succeed on its argument that two layers of "good-cause removal" restrictions protecting Department of Labor Administrative Law Judges violates Article II of the Constitution); and *Sun Valley Orchards, LLC v. U.S. Department of Labor*, 148 F.4th 121 (3d. Cir. 2025) (Article III of the Constitution precludes the Department of Labor from seeking civil penalties and back wages through administrative proceedings).

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Conclusion

CWC sincerely appreciates the opportunity to offer these comments regarding OFCCP's E.O. 11246 regulations. Please do not hesitate to contact us if we can provide further assistance or perspective as you consider these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Danny E. Petrella". The signature is fluid and cursive, with a large initial "D" and "P".

Danny E. Petrella
Senior Vice President, Compliance, and Assistant General Counsel